55, 129 N. W. 158. See *Western Savings Fund Society* v. *City of Philadelphia*, 31 Pa. 175, 183. It is generally said, however, that a water company, whether municipal or private, is liable for furnishing unwholesome water only on proof of negligence. See *Green* v. *Ashland Water Co.*, 101 Wis. 258, 263; 77 N. W. 722, 724; *Hayes* v. *Torrington Water Co.*, 88 Conn. 609, 612, 92 Atl. 406, 407. See also 3 DILLON, MUNICIPAL CORPORATIONS, 5 ed., § 1316.

STARE DECISIS — THE EXTENT OF THE DOCTRINE. — The plaintiff was injured in an accident caused by a defective wheel on an automobile, manufactured by the defendant, but purchased from a retail dealer. A judgment for the plaintiff in the District Court was reversed at a prior hearing before the Circuit Court on the ground that no right of action existed although the defendant was negligent. The plaintiff now brings error to the Circuit Court from a judgment for the defendant. *Held*, that a cause of action does exist. *Johnson* v. *Cadillac Motor Car Co.*, 261 Fed. 878 (C. C. A.), reversing 221 Fed. 801.

Proceedings were instituted to disbar an attorney under a California statute (1916 FAIRALL'S CODE CIV. PROC., §§ 287, 288, 289). A certain construction had been given to these sections by a series of decisions extending over a period of thirty-five years. *Held*, that this construction can be changed only by the legislature. *In re Riccardi*, 189 Pac. 694 (Cal.).

For a discussion of these cases, see NOTES, p. 74, *supra*.

STATUTE OF FRAUDS — ORAL WAIVER OF CONDITION IN WRITTEN CONTRACT. — The plaintiff and the defendant drew up a written contract for the exchange of land free from any incumbrances. Subsequently, and prior to the date when performance was due, the parties orally agreed upon the substitution of a deposit of money for the removal of any incumbrances. In reliance upon that understanding, the plaintiff allowed an incumbrance to remain on his property on the date when performance was due. The defendant refused to perform. Plaintiff sues for breach of contract and defendant sets up the Statute of Frauds. *Held*, that the plaintiff can recover. *Imperator Realty Co.* v. *Tull*, 127 N. E. 263 (N. Y.).

A defendant, who prevents or hinders the performance of an obligation upon which his liability depends, is precluded from interposing such non-performance as a defense to an action on the contract. *United States* v. *Peck*, 102 U. S. 64; *Patterson* v. *Meyerhofer*, 204 N. Y. 96, 97 N. E. 472. The plaintiff's excuse for non-performance is equally effective when he relies on the defendant's sanction to dispense with such performance. *Hirsch Rolling Mill Co.* v. *Milwaukee & Fox River Valley Ry. Co.*, 165 Wis. 220, 161 N. W. 741; *Neppach* v. *Oregon & C. R. Co.*, 46 Ore. 374, 80 Pac. 482. However, it is essential that the plaintiff could and would have performed the condition, had it not been for the permission of the defendant. *McCalley* v. *Otey*, 99 Ala. 584, 12 So. 406; *Shank* v. *Groff*, 45 W. Va. 543, 32 S. E. 248. The plaintiff is excused because it is unjust that the defendant take advantage of the failure which he himself caused. Therefore, an oral waiver of a condition in a written contract within the Statute of Frauds should also excuse the plaintiff's non-performance. *Scheerschmidt* v. *Smith*, 74 Minn. 224, 77 N. W. 34; *Hirsch Rolling Mill Co.* v. *Milwaukee & Fox River Valley Ry. Co.*, *supra*. The Statute of Frauds is satisfied because the action is on the written contract. The oral understanding is introduced only to excuse the plaintiff's non-performance of a condition. *Cf. Rosenfeld* v. *Standard Bottling & Extracts Co.*, 232 Mass. 239, 122 N. E. 299.

STATUTES — IMPEACHMENT OF STATUTES — ADMISSIBILITY OF HOUSE JOURNALS. The constitution of Georgia provides: "No bill or resolution ap-

propriating money shall become a law, unless upon its passage the yeas and nays, in each house, are recorded." (1910 GA. CIV. CODE, § 6441.) An act appropriating money was passed, signed and deposited with the Secretary of State. Mandamus proceedings were instituted by the Governor to compel obedience by the Comptroller-General. For respondent, evidence was admitted to show that the yeas and nays had not been recorded. *Held*, that this admission was error. *Dorsey* v. *Wright*, 103 S. E. 591 (Ga.).

The decision amounts to holding that the court will not enforce the constitutional provision. In England, where Parliament is supreme, courts have never admitted evidence to impeach enrolled acts. *Rex* v. *Arundel*, Hob. 109. In spite of the fact that United States legislatures derive their powers from written constitutions, many of our state courts and the United States Supreme Court have held properly authenticated bills to be conclusive proof of their constitutional enactment. *Field* v. *Clark*, 143 U. S. 649; *Bloomfield* v. *County of Middlesex*, 74 N. J. L. 261, 65 Atl. 890. This view is supported by considerations of practical expediency. See 11 HARV. L. REV. 267. *Pangborn* v. *Young*, 32 N. J. L. 29. But on strict theory an act not constitutionally passed is not law, and should be given no effect by the courts. *Simpson* v. *Union Stock Yards Co.*, 110 Fed. 799. *West End* v. *Simmons*, 165 Ala. 359, 51 So. 638. And the objection that a properly certified bill should not be impeached by evidence so uncertain as a journal has no force where the entry on the journal is itself the fact to be proved. *Bank* v. *Commissioners of Oxford*, 119 N. C. 214, 25 S. E. 966. *Lafferty* v. *Huffman*, 99 Ky. 80, 35 S. W. 123, *contra*.

SURETYSHIP — SURETY'S RIGHT OF SUBROGATION — SUBROGATION AGAINST A BANKRUPT PRINCIPAL IN FAVOR OF A SURETY FOR PART OF A DEBT — EFFECT OF A STATUTE GIVING A SURETY "THE LIKE PRIORITY . . . AS IS SECURED TO THE UNITED STATES." — By statute the United States is given priority over all other creditors of an insolvent or bankrupt debtor. (REV. STAT., § 3466; 1918 COMP. STAT., § 6372.) It is further provided that where the principal in any bond given to the United States is insolvent, a surety on the bond, who pays the United States, is entitled to "the like priority . . . as is secured to the United States." (REV. STAT., § 3468; 1918 COMP. STAT., § 6374.) The principal on a bond given for the faithful performance of a contract with the United States defaulted and became bankrupt. The surety paid the United States the amount of the bond, which did not cover the whole of the government's loss. The government filed a claim for the residue of the damages caused by the default and this claim was accorded priority over all other claims. The surety now petitions for equal priority with the United States. *Held*, that the petition be granted. *United States* v. *National Surety Co.*, 262 Fed. 62.

Although in England the Crown was entitled to priority at common law over all other creditors of a bankrupt or insolvent debtor by virtue of its sovereign prerogative, the priority of the United States is founded exclusively upon statutes. *United States* v. *The State Bank of North Carolina*, 6 Pet. (U. S.) 29. Originally such statutes were liberally construed, but the later tendency of the courts has been to find implied limitations to this priority in other acts of Congress. *Cook County National Bank* v. *United States*, 107 U. S. 445. The majority of the court in the principal case took this attitude in construing REV. STAT., § 3468. Although in England at common law a surety for a bankrupt principal who is surety for part only of the debt and who has paid that part is entitled to be subrogated to the creditor's claim against the bankrupt's estate and to a ratable proportion of the securities held by the creditor to secure the whole debt, this doctrine has been severely criticized and is not generally followed in the United States. *Knafft* v. *Knoxville Banking Co.*, 133 Tenn. 655, 182 S. W. 232. See 2 WILLISTON, CONTRACTS,